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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 49A02-0710-CR-865

April 24, 2008

BAKER, Chief Judge

Appellant-defendant Brent Minard appeals the sentence imposed by the trial court following his convictions for Attempted Murder,¹ a class A felony, Auto Theft,² a class D felony, and Resisting Law Enforcement,³ a class D felony. Minard contends that the trial court abused its discretion by failing to find certain proffered mitigating circumstances and that the fifty-year sentence is inappropriate in light of the nature of the offenses and Minard's character. Finding no error, we affirm.

FACTS

Norman Retell was the manager of an apartment complex in Marion County. At some point, Retell hired Minard to do some painting at the apartment complex. Retell and Minard began a sexual relationship.

On December 4, 2006, Minard spent the night at Retell's residence. At some point in the middle of the night, Retell was awakened when he "felt somethin' go across my neck" Tr. p. 24. He realized that Minard had slit his throat with a knife. Minard then stabbed Retell several more times, eventually stabbing Retell so deeply that the knife lodged in his chest.

Retell fled into another bedroom and shut the door. He was holding onto the wound in his neck, and when he let go of his neck, blood came spurting out with each heartbeat. Minard was holding the door to the bedroom shut and refused to let Retell leave even after Retell said that he was going to bleed to death. Eventually, Retell

¹ Ind. Code § 35-41-5-1, § 35-42-1-1.

² Ind. Code § 35-43-4-2.5.

³ Ind. Code § 35-44-3-3.

opened the window, removed the screen, fell from the second floor to the ground, and ran to a neighbor's house, where he collapsed. The neighbor provided medical care until an ambulance arrived. Retell was transported to the hospital, where he received surgery to repair his carotid artery. He had suffered multiple stab wounds and was in a state of shock when he arrived at the hospital. He was hospitalized for four days.

When police arrived at the scene, they observed Minard driving Retell's red pickup truck out of the parking lot. Minard proceeded to lead the police on a six-mile chase, disobeying traffic signals and ignoring stop signs. The chase eventually ended in an alley when Minard drove into an abutment and flipped the truck upside-down. Minard fled from the scene of the accident and was eventually apprehended after an officer tackled him to the ground.

On December 11, 2006, the State charged Minard with various offenses. After a jury trial that took place on August 20 and 21, 2007, the jury convicted Minard of attempted murder, aggravated battery, auto theft, and resisting law enforcement. On August 21, 2007, the trial court merged the aggravated battery and attempted murder convictions. On September 7, 2007, following a hearing, the trial court sentenced Minard to fifty years for attempted murder, one and one-half years for auto theft, and one and one-half years for resisting law enforcement, to be served concurrently. Minard now appeals.

DISCUSSION AND DECISION

I. Mitigating Circumstances

Minard first argues that the trial court abused its discretion by failing to find his history of mental health issues and his intellectual capabilities to be mitigating circumstances. In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (2007), our Supreme Court held that trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. Id. If the recitation includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. We review sentencing decisions for an abuse of discretion. Id. A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91.

When considering a claim of mental illness as a mitigating factor, it is necessary to evaluate:

(1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations and functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or the impairment and the commission of the crime.

Williams v. State, 840 N.E.2d 433, 439 (Ind. Ct. App. 2006). Here, the record reveals that in 1990 and 1991, when Minard was twelve and thirteen years old, he was hospitalized four times and diagnosed with the following disorders: depression, oppositional defiant disorder, dysthmic disorder, attention deficit hyperactivity disorder, and conduct disorder. Minard was twenty-eight years old at the time he committed the instant offenses. The most recent IQ test in the record occurred when Minard was fourteen, and it revealed that he has an IQ of 74.

There is no evidence in the record regarding Minard's mental health since 1992, when he attended some counseling sessions. The instant offenses occurred fourteen years later. Moreover, there is no evidence in the record that at the time of his hospitalizations, Minard was unable to control his behavior because of his mental health disorders. There is no evidence regarding overall limitations or the duration of the mental illness. Most compelling of all, there is no evidence establishing a nexus between Minard's mental health and his actions on the night in question, nor is there a similar link between his IQ score and his crimes. Under these circumstances, we cannot say that the trial court abused its discretion by declining to find Minard's mental health and intellectual abilities to be a mitigating factor.

II. Appropriateness

Minard next argues that the aggregate fifty-year sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character. In reviewing an appropriateness challenge pursuant to Appellate Rule 7(B), we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the

defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of Minard's offenses, he slit Retell's throat while Retell was asleep and vulnerable. He then stabbed Retell multiple times, eventually lodging the knife in the victim's chest. After Retell fled to a bedroom, Minard held the door shut and refused to let him leave even after Retell said that he was going to bleed to death. After Retell was able to escape, Minard fled the scene of the crime and led police officers on a six-mile chase, ignoring traffic signals and stop signs. He eventually flipped Retell's vehicle—which he had stolen as he fled the scene—and fled on foot until he was tackled by an officer. We do not find the nature of these offenses to aid Minard's inappropriateness argument.

As for Minard's character, we observe that his criminal history dates back to 1997, when he was nineteen years old. He has amassed convictions for class C misdemeanor operating while never receiving a license, two class A misdemeanor possession of marijuana, two class A misdemeanor driving while suspended, class D felony resisting law enforcement, class D felony attempted residential entry, and class A misdemeanor invasion of privacy. He also violated probation after he failed to comply with domestic violence counseling and tested positive for marijuana and cocaine use. This lengthy criminal history shows Minard's disregard for the law and fellow members of society. Additionally, Minard smokes marijuana daily and uses cocaine twice per month, but there is no evidence that he has sought substance abuse treatment and he has stated that he does not believe his drug use is a problem.

Minard directs our attention to his tumultuous childhood, which involved parental abandonment, foster care, and sexual abuse. We do not deny the tragedies that Minard had to face during his formative years. Indeed, the trial court acknowledged Minard's troubled childhood as a mitigator: "I find that there is only one mitigator, and that is his treatment by his mother as a child. He was abused and abandoned by his mother, and I think that is the reason we are here today." Tr. p. 483. To the extent that Minard argues that his hardships go beyond those acknowledged by the trial court, we simply note that he has failed to show a nexus between his childhood and his criminal history leading up to the heinous acts he committed herein. Additionally, to the extent that he contends that we should factor his mental health and intellectual capabilities into our analysis, we again note that he has failed to show a nexus between these alleged conditions and his crimes. Under these circumstances, we cannot conclude that the fifty-year sentence imposed by the trial court is inappropriate in light of the nature of the offenses and Minard's character.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.